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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 451

FEDERAL COMMUNICATIONS COMMISSION, *Petitioner*,

v.

ALLENTOWN BROADCASTING CORPORATION.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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OBJECTION TO MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

DONALD C. BEELAR,
Attorney for
ALLENTOWN BROADCASTING CORPORATION

February 18, 1955.

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Allentown Broadcasting Corporation submits the following reasons for withholding consent to the Easton Publishing Company's motion for leave to file a brief *amicus curiae* in this case.

Easton Publishing Company, a party to the proceeding before the FCC, was given statutory notice of the filing of the notice of appeal in this case (No. 11,957) but failed to intervene therein as provided by statute, 47 U.S.C.,

§ 402(e) (1952 ed.). The Easton Publishing Company's failure to intervene, whether "inadvertently" or otherwise, should be considered jurisdictional like failing to file a timely appeal. Such statutory procedure should not be subtended by resort to *amicus curiae* Rule 42. Allowance of the motion would obscure the distinction between a dilatory litigating-party and one truly *amicus curiae*. See *Clark* v. *Sandusky*, 205 F. 2d 915, 917 (7th Cir. 1953).

WHEREFORE, considering the above reasons and the irrelevancy of the matter tendered, it is urged that the motion be denied.

Respectfully submitted,

DONALD C. BEELAR,
Attorney for
ALLENTOWN BROADCASTING CORPORATION

February 18, 1955.